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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 HOWARD S. BENNETT,

11 Petitioner,

12 v.

13 JASON BENNETT,

14 Respondent.

CASE NO. C24-0272JLR

ORDER

15 **I. INTRODUCTION**

16 On May 29, 2024, the court adopted in its entirety Magistrate Judge Michelle L.  
17 Peterson's report and recommendation, dismissed *pro se* Petitioner Howard S. Bennett's  
18 28 U.S.C. § 2241 petition for a writ of habeas corpus as untimely, and entered judgment.  
19 (5/29/24 Order (Dkt. # 11); Judgment (Dkt. # 12); R&R (Dkt. # 8); Petition (Dkt. #5).)

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1 On June 5, 2024, Mr. Bennett<sup>1</sup> filed a notice of appeal of the court's order dismissing his  
2 case. (NOA (Dkt. # 13).) On June 11, 2024, Mr. Bennett filed his first motion for relief  
3 from judgment. (*See* Dkt. # 15.)

4 On June 21, 2024, Mr. Bennett filed three additional documents titled "Motion for  
5 Relief from Judgment": Docket number 16, which Mr. Bennett represents corrects his  
6 original motion for relief from judgment by including the case number in the caption (*see*  
7 Dkt. # 16 at 3), and docket numbers 17 and 18, each of which includes an additional  
8 ground for relief from judgment (*see* Dkt. ## 17-18). On June 25, 2024, Mr. Bennett  
9 filed three more documents titled "Motion for Relief from Judgment," each of which,  
10 again, includes an additional ground for relief. (*See* Dkt. ## 19-21.) Mindful of its duty  
11 to liberally construe a *pro se* petitioner's filings, the court considers docket numbers 15  
12 through 18 and 19 through 21 together as constituting Mr. Bennett's motion for relief  
13 from judgment. The court has considered Mr. Bennett's motion, the relevant portions of  
14 the record, and the governing law. Being fully advised, the court DENIES Mr. Bennett's  
15 motion for relief from judgment.

## 16 II. BACKGROUND

17 Mr. Bennett is a state prisoner who is currently confined at the Stafford Creek  
18 Corrections Center in Aberdeen, Washington, pursuant to a state-court judgment and  
19 sentence issued in February 1998. (*See* Petition at 1.) Mr. Bennett argues that his  
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21 <sup>1</sup> The petition has not been served on Respondent Jason Bennett, and Jason Bennett has  
22 not appeared in this action. (*See generally* Dkt.) Thus, the court refers to Petitioner Howard S.  
Bennett as "Mr. Bennett" throughout this order.

1 confinement is illegal because the Pierce County District Court did not issue a valid arrest  
2 warrant in his criminal case. (*See generally* Memorandum (Dkt. # 5-2); Bennett Aff.  
3 (Dkt. # 5-1) (describing his efforts to obtain a copy of his arrest warrant).)

4 On February 28, 2024, Mr. Bennett filed a motion for leave to proceed *in forma*  
5 *pauperis* (“IFP”) and a proposed § 2241 petition in this court. (IFP Mot. (Dkt. # 1).) He  
6 filed a corrected IFP motion on March 7, 2024. (2d IFP Mot. (Dkt. # 3).) On March 15,  
7 2024, Magistrate Judge Peterson (1) granted Mr. Bennett’s corrected IFP motion;  
8 (2) filed Mr. Bennett’s petition on the docket; and (3) issued an order construing Mr.  
9 Bennett’s petition as filed pursuant to 28 U.S.C. § 2254 and directing Mr. Bennett to  
10 show cause why the petition should not be dismissed as time-barred because the statute of  
11 limitations for Mr. Bennett to file a § 2254 petition relating to his 1998 conviction and  
12 sentence expired in December 2001, more than 22 years before Mr. Bennett filed his  
13 petition in this case. (IFP Ord. (Dkt. # 4); Petition; OSC (Dkt. # 7).)

14 Mr. Bennett did not respond the order to show cause. (*See generally* Dkt.) On  
15 May 2, 2024, Magistrate Judge Peterson filed a report and recommendation in which she  
16 recommended dismissing the petition as time-barred. (*See generally* R&R.) Mr. Bennett  
17 filed timely objections on May 8, 2024. (*See generally* Obj.) On May 9, 2024, the court  
18 overruled Mr. Bennett’s objections; adopted the report and recommendation in its  
19 entirety; dismissed Mr. Bennett’s habeas petition; and entered judgment. (*See generally*  
20 5/9/24 Order. *See also* Judgment.) The instant motion followed.

### III. ANALYSIS

In each of his seven purported motions for relief from judgment, Mr. Bennett cites Federal Rule of Civil Procedure 60(b)(4), which provides that the court may relieve a party from a final judgment if the judgment is void. (*See, e.g.*, Dkt # 15 at 1 (citing Fed. R. Civ. P. 60(b)(4)).) The court also understands that Mr. Bennett seeks relief pursuant to Rule 60(b)(6), which empowers the court to relieve a party from a final judgment for any reason that justifies relief. (*See, e.g.*, Dkt. # 15 at 1 (citing *Gonzalez v. Crosby*, 545 U.S. 524, 528 n.1 (2005) (stating that the substance of petitioner’s motion “made clear that [he] sought relief under Rule 60(b)(6)”).) As a remedy, Mr. Bennett “requests this [c]ourt to re open habeas proceedings based on the failure to apply United States Supreme Court precedent in the determination of the Fourth Amendment – Unlawful Seizure claim, presented in his [§] 2241 petition.” (*See, e.g.*, Dkt. # 15 at 2 (citing *Williams v. Taylor*, 529 U.S. 362 (2000)).) He also seeks a certificate of appealability “to avoid a dilatory remand for the limited purpose of granting or denying a certificate of appealability.” (*See, e.g., id.*)

Rule 60(b) “allows a party to seek relief from a final judgment, and request reopening of his case, under a limited set of circumstances.” *Gonzalez*, 545 U.S. at 528. Rule 60(b)(4) provides relief from a final judgment if it is void as a matter of law. Fed. R. Civ. P. 60(b)(4). “The list of such judgments is ‘exceedingly short,’ and ‘Rule 60(b)(4) applies only in the rare instance where a judgment is premised either on a certain type of jurisdictional error or on a violation of due process that deprives a party of notice or the opportunity to be heard.’” *Dietz v. Bouldin*, 794 F.3d 1093, 1096 (9th Cir. 2015)

1 (quoting *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010)), *aff'd*,  
2 579 U.S. 40 (2016). Rule 60(b)(6), meanwhile, allows a court to relieve a party from a  
3 final judgment for any reason justifying relief. Fed. R. Civ. P. 60(b)(6). The party  
4 seeking relief under Rule 60(b)(6) must show “‘extraordinary circumstances’ justifying  
5 the reopening of a final judgment.” *Gonzalez*, 545 U.S. at 535 (quoting *Ackermann v.*  
6 *United States*, 340 U.S. 193, 199 (1950)). The court concludes that Mr. Bennett has  
7 failed to make the requisite showing under Rule 60(b)(4) and Rule 60(b)(6).

8 First, Mr. Bennett “requests an application of the analysis set forth in” *Ornelas v.*  
9 *United States*, 517 U.S. 690 (1996). (Dkt. # 15 at 1; Dkt. # 16 at 1.) He asserts that  
10 “noteworthy is the historical fa[c]t that petitioner filed a Motion Requesting Evidentiary  
11 Hearing pursuant to Evidence Rule 201(e), which received no consideration.” (See Dkt.  
12 # 15 at 1-2, Dkt. # 16 at 1-2.) He further asserts that § 2254(d)(2) “commands that a  
13 federal habeas court must make as the starting point of their analysis the state court’s  
14 determination of fact including a mixed question.” (Dkt. # 15 at 2 (citing *Ornelas*, 517  
15 U.S. at 696); Dkt. # 16 at 2 (same).) In *Ornelas*, the Supreme Court held that “the  
16 ultimate questions of reasonable suspicion and probable cause to make a warrantless  
17 search [in violation of the Fourth Amendment] should be reviewed *de novo*” on direct  
18 appeal. *Ornelas*, 517 U.S. at 691. Mr. Bennett did not file a motion requesting an  
19 evidentiary hearing in this case (*see generally* Dkt.) and the court was not in a position to  
20 review “the state court’s determination of fact” because Mr. Bennett’s habeas petition  
21 was untimely (*see generally* 5/9/24 Order). Mr. Bennett has not shown that this is one of  
22 the “rare instances” justifying relief under Rule 60(b)(4), nor has he demonstrated

1 “extraordinary circumstances” justifying relief under Rule 60(b)(6). Therefore, the court  
2 denies his motion for relief from judgment on the grounds raised in docket numbers 15  
3 and 16.

4 Second, Mr. Bennett asserts that the court “violated the Magistrates Act and  
5 Habeas Rule 8(b) by rechara[c]terizing petitioner’s 28 U.S.C. § 2241 to a 28 U.S.C.  
6 § 2254.” (Dkt. # 17 at 1-2 (citing 28 U.S.C. § 636(b)(1); Rules Governing Section 2254  
7 Cases in the United States District Courts Rule 8(b) (hereinafter “2254 Rule 8(b)”);  
8 *Castro v. United States*, 540 U.S. 375 (2003); *Gomez v. United States*, 490 U.S. 858  
9 (1989); *Dawson v. Marshall*, 561 F.3d 930, 932 (9th Cir. 2009).) The Magistrates Act  
10 provides, in relevant part, that “[a] judge of the court may accept, reject, or modify, in  
11 whole or in part, the findings or recommendations made by the magistrate judge.” 28  
12 U.S.C. § 636(b)(1)(C). “The statute makes it clear that the district judge must review the  
13 magistrate judge’s findings and recommendations de novo *if objection is made*, but not  
14 otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en  
15 banc). Here, the court adopted Magistrate Judge Peterson’s recommendation to construe  
16 Mr. Bennett’s § 2241 petition as a § 2254 petition after conducting a de novo review of  
17 Mr. Bennett’s petition and his memorandum in support thereof. (*See* 5/9/24 Order at 4.)  
18 The court held that “although Mr. Bennett asserts that the state court judgment was  
19 improper, he is nevertheless ‘a state prisoner in custody pursuant to a state court  
20 judgment’ and thus any challenge to that judgment must be brought pursuant to § 2254.”  
21 (*Id.* (quoting *Dominguez v. Kernan*, 906 F.3d 1127, 1135 (9th Cir. 2018)). Mr. Bennett  
22 does not explain how the court’s prior holding is one of the “rare instances” justifying

1 relief under Rule 60(b)(4) and does not identify “extraordinary circumstances” justifying  
2 relief under Rule 60(b)(6). Thus, the court denies his motion for relief from judgment on  
3 the grounds asserted in docket number 17.

4 Third, Mr. Bennett asserts that the court “violated the Magistrates Act and Habeas  
5 Rule 8(b) by failing to conduct de novo review of the Affidavit in Support of 28 U.S.C  
6 § 2241.” (Dkt. # 18 at 1-2 (citing 28 U.S.C. § 636(b)(1); 2254 Rule 8(b); *Gomez*, 490  
7 U.S. 858; *Dawson*, 561 F.3d at 932).) The court, however, reviewed Mr. Bennett’s  
8 affidavit de novo and found “nothing in the affidavit to support a finding that Mr.  
9 Bennett’s petition was timely.” (*See* 5/9/24 Order at 4-5 (citing Bennett Aff. (Dkt.  
10 # 5-1)).) Again, Mr. Bennett does not explain how the court’s prior ruling qualifies as a  
11 “rare instance” or “extraordinary circumstance” justifying relief under Rules 60(b)(4) and  
12 (6). Therefore, the court denies his motion for relief from judgment on the ground  
13 asserted in docket number 18.

14 Fourth, Mr. Bennett asserts that the court “violated the Magistrate’s Act and  
15 Habeas Rule 8(b) by failing to conduct de novo review of the Motion Requesting Judicial  
16 Notice in Support of 28 U.S.C. § 2241.” (Dkt. # 19 at 1-2 (citing 28 U.S.C. § 636(b)(1);  
17 2254 Rule 8(b); *Gomez*, 490 U.S. 858; *Dawson*, 561 F.3d at 932; Fed R. Evid. 201(e)).)  
18 The court, however, reviewed Mr. Bennett’s motion for judicial notice de novo and found  
19 “nothing in the attached documents that would alter the conclusion that Mr. Bennett’s  
20 petition was untimely.” (5/9/24 Order at 5 (citing Judicial Notice Mot. (Dkt. # 6)).) Mr.  
21 Bennett does not explain why the court’s judgment qualifies as one of the “rare  
22 instances” or “extraordinary circumstances” justifying relief under Rules 60(b)(4) and

1 (6). Accordingly, the court denies Mr. Bennett's motion for relief from judgment on the  
2 ground asserted in docket number 19.

3 Fifth, Mr. Bennett asserts that the court "violated the Magistrate's Act and Habeas  
4 Rule 8(b) by failing to conduct de novo review of the MOTION REQUESTING BRADY  
5 ORDER IN SUPPORT OF 28 U.S.C. § 2241." (Dkt. # 20 at 1-2 (citing *Brady v.*  
6 *Maryland*, 373 U.S. 83 (1963); 28 U.S.C. § 636(b)(1); 2254 Rule 8(b); *Gomez*, 490 U.S.  
7 858; *Dawson*, 561 F.3d at 932).) Mr. Bennett did not, however, file a motion with this  
8 court requesting an order pursuant to *Brady v. Maryland* (*see generally* Dkt.), and to the  
9 extent Mr. Bennett argued in his objections that the court should order Respondent to  
10 produce a certified copy of his arrest warrant, the court concluded that it could not grant  
11 that request because Mr. Bennett's petition was untimely (*see* 5/9/24 Order at 5). The  
12 court finds no basis for relief pursuant to Rule 60(b) based on the ground asserted in  
13 docket number 20.

14 Finally, Mr. Bennett asserts that the court "violated the Magistrate's Act and  
15 Habeas Rule 8(b) by failing to consider if an evidentiary hearing would benefit a merits  
16 resolution, nor Petitioner's right to contest factual disputes and expand the record." (Dkt.  
17 # 21 at 1-2 (citing *Townsend v. Sain*, 372 U.S. 293 (1963); *Cullen v. Pinholster*, 563 U.S.  
18 170, 181-82 (2011); 28 U.S.C. § 636(b)(1); 2254 Rule 8(b); *Gomez*, 490 U.S. 858;  
19 *Dawson*, 561 F.3d at 932).) The court, however, reviewed de novo whether an  
20 evidentiary hearing was appropriate in this case and declined to order a hearing because  
21 Mr. Bennett "ha[d] not identified any evidence that he could present at an evidentiary  
22 hearing that would call into question the conclusion that his petition must be dismissed as



1 untimely.” (5/9/24 Order at 5-6 (citing *Schriro v. Landrigan*, 550 U.S. 465, 473-74  
2 (2007))).) Thus, the court also denies Mr. Bennett’s request for Rule 60(b) relief on the  
3 ground asserted in docket number 21.

4 In sum, Mr. Bennett has not established that this matter qualifies as a “rare  
5 instance” justifying relief, nor has he demonstrated “extraordinary circumstances”  
6 justifying the reopening of a final judgment. Therefore, the court DENIES Mr. Bennett’s  
7 motion for relief from judgment.

8 Mr. Bennett seeks a certificate of appealability in relation to his Rule 60(b)  
9 motions. A certificate of appealability “should only issue for [an] appeal arising from the  
10 denial of a Rule 60(b) motion in a section 2255 proceeding if the movant shows that  
11 (1) jurists of reason would find it debatable whether the district court abused its discretion  
12 in denying the Rule 60(b) motion and (2) jurists of reason would find it debatable  
13 whether the underlying section 2255 motion states a valid claim of the denial of a  
14 constitutional right.” *United States v. Winkles*, 795 F.3d 1134, 1143 (9th Cir. 2015). Mr.  
15 Bennett has made neither showing. Accordingly, the court denies Mr. Bennett’s request  
16 for a certificate of appealability.

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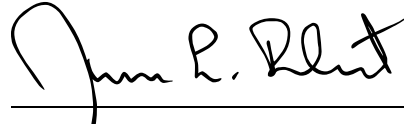
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**IV. CONCLUSION**

For the foregoing reasons, the court DENIES Mr. Bennett's motion for relief from judgment (Dkt. ## 15-18, 19-21) and DENIES his request for a certificate of appealability.

Dated this 5th day of July, 2024.

A handwritten signature in black ink, appearing to read "James L. Robart", written over a horizontal line.

JAMES L. ROBART  
United States District Judge